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ABRESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 330

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Bruce C. Johnson
Serial No.	: 08/615,814
Filed	: March 14, 1996
For	: NASAL DILATOR
Docket No.	: C348.12-0011

Group Art Unit: 3312

Examiner: K. Asher

AMENDMENT AFTER FINAL

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BOX AFAssistant Commissioner for Patents
Washington, D.C. 20231

GROUP 3300

Sir:

This communication is in response to the Advisory Action dated April 25, 1997 issued following the last amendment filed by the applicant on April 18, 1997 in connection with the final rejection in the Action of February 13, 1997 supplementing the Action of January 27, 1997. In the later Action, claims 1 through 22 were rejected.

In the Advisory Action of April 25, 1997, the Examiner indicates claims 1 and 12 are in allowable form, and that claims 10, 14 and 15 were not in the independent form indicated to be allowable in the February 13 Action. No mention was made of claim 23.

In view of claims 1 and 12 having been indicated to be in allowable form, no further mention of them will be made here. In addition, claim 23 was indicated to be in allowable form in the Examiner Interview Summary Record of the telephonic interview between the applicant's attorney and the Examiner of March 12, 1997, this being Paper No. 14 in the present application. Claim 23 is an amended version of originally filed claim 8 substituting for the single body phrase initially therein a secured resilient member phrase to thereby provide the resulting claim with a scope greater than that of the corresponding claim issued in the patent granted on the application parent to the present one which claim contained both of these phrases.

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Rather than amending claim 8 in the April 18, 1997 amendment filing, the applicant cancelled claim and left claim 23 therein so as to maintain continuity with the claim referenced in Paper No. 14.

This leaves claims 10, 14 and 15 to be treated here. Claim 10, a dependent claim depending on claim 8, was rewritten in independent form in the amendment filed by the applicant on April 18, 1997. The Examiner responded in the Advisory Action of April 25, 1997 with a statement that this rewritten claim is in a different independent form than the form indicated allowable in the Action of February 13, 1997. Claim 10 at the time of the February 13 Action was in the same form as originally filed except for substituting "member" for "means" in two places therein in the amendment filed on November 6, 1996 by the applicant and received on November 12, 1996 by the Office. Claim 8 was in its originally filed form at the time of the February 13 Action.

Claim 10 in this form sets out a truss having a resilient member that provides the restoring forces in the truss tending to restore the spacing between the end surfaces as recited in claim 8, and further sets out the presence of a deformable material between that resilient member and the exposed surfaces of any outer wall tissues that are engaged by the engagement means set out in claim 8. In combining claim 8 with these aspects of claim 10 in its February 13 form to provide the rewritten version thereof in the applicant's April 18 amendment filing, the preamble and the first element of claim 8 have been introduced into the February 13 version of claim 10 as indicated by the initial underlined words in the rewritten claim. Rather than repeating the provision of restoring forces in the truss for restoring the spacing appearing in the February 13 versions of both claims 8 and 10, the applicant introduced that aspect from claim 8 in the rewritten claim stating that those forces were due to the resilient member introduced in the February 13 version of claim 10. Aside from omitting this redundant wording from the February 13 version of claim 10, and omitting the initial dependency phrase of that version, all of the remaining wording in the February 13 version of claim 10 is present in the rewritten claim.

Thus, any omission from the February 13 versions of claims 8 and 10 in rewritten claim 10 in the April 18 amendment filing must be due to an omission of some part of that claim

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8 version. The only phrase missing in rewritten claim 10 from claim 8 is the phrase "of a single body" following the word "truss" in the first element thereof. However, since rewritten claim 10 has a resilient member in the truss set out therein, the phrase "of a single body" is not necessary for patentability as has been indicated by the Examiner in the earlier finding of claim 23 to be in allowable form. Furthermore, removal of this phrase "of a single body" thereby leaves claim 10 as rewritten in the amendment of April 18 not only in patentable form but with a scope greater than that of corresponding claim 21 in the patent issued on the application parent to the present one. Hence, rewritten claim 10 in the April 18 amendment filing appears to be in allowable form.

Essentially the same situation is present in claim 14 as rewritten in the amendment filing of April 18 as that situation just described for claim 10 as rewritten in that amendment filing. Claim 14 in its February 13 version also sets out a resilient member but, rather than further setting out deformable material, instead sets out the occurrence of a spacing between the resilient member and the end edges of the truss. Otherwise, no significant difference appears in this situation with respect to rewritten claim 14 from the situation in connection with rewritten claim 10. Hence, rewritten claim 14 should also be patentable and of a scope sufficiently different from corresponding claim 31 in the patent issued on the application parent to the present one.

As to the February 13 version of claim 15, dependent on claim 9 which in turn is dependent on claim 8, the versions of claims 15 and 9 at the time of the indication of allowability of claim 15 in the February 13 Action were in the forms they had when originally filed. Claim 15 as rewritten in the amendment filing of April 18 essentially includes the February 13 version of claim 15 verbatim except for the initial dependency phrase as seen in the words not underlined. Claim 9 as originally filed first sets out a nasal dilator configured to restrain outer wall tissues of a human nose adjacent nasal passages from being drawn in during breathing. This aspect appears in the preamble of rewritten claim 15 except for the reciting of the outer wall tissues of a user's nose being restrained having a location "adjacent nasal passages" of that nose. This omission was made to reduce the wordiness of the claim as it appeared redundant in view of the

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recitation that the dilator is restraining the outer wall tissues of a user's nose from being drawn in during breathing. However, should this be viewed as a problem by the Examiner, the applicant certainly stands ready to add this phrasing.

Claim 9 as originally filed secondly sets out that the truss is to have sufficient restoring forces to substantially maintain during inhalation the spacing occurring between the end surfaces of the truss prior to inhalation. This wording can be found in the underlined wording of the first element at lines 7 through 9. Claim 8 as originally filed also appears essentially verbatim in rewritten claim 15. Thus, other than the phrase "adjacent nasal passages", the applicant can see nothing omitted in rewritten claim 15 from the originally filed versions of claims 8, 9 and 15, and so this rewritten version of claim 15 would appear to be in the form indicated allowable except for this omitted phrase. Again, should that be a problem, the applicant is certainly willing to include that phrase in the claim.

In view of the foregoing, the applicant respectfully requests the Examiner to reconsider her decision not to enter the amendment filed on April 18, 1997 in the present application, and further requests that this amendment now be entered and the application allowed.

Respectfully submitted,

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